

APPEAL NO. 050355
FILED MARCH 23, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 12, 2005. The hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to include the cervical and thoracic spine in addition to the low back, and that the claimant only had disability beginning May 25, 2004, and continuing through the date of the CCH and at no other times. The appellant (carrier) appeals, contending that the hearing officer should not have made a determination on disability because the disability issue was withdrawn by the parties at the CCH, and that the credible evidence proves that any alleged injury to the cervical and thoracic spine is completely unrelated to the compensable injury. The claimant agrees that the disability issue was withdrawn, but requests affirmance of the hearing officer's decision.

DECISION

We affirm the determination on the issue of the extent of the compensable injury. We reverse the disability determination and render a decision that disability was not a disputed issue before the hearing officer.

It is undisputed that the claimant sustained a compensable low back injury. Conflicting evidence was presented on the disputed issue of whether the compensable injury extends to include the cervical and thoracic spine. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that sufficient evidence supports the hearing officer's determination that the compensable injury extends to the cervical and thoracic spine and that such determination is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

In addition to the issue regarding the extent of the compensable injury, the benefit review conference report also lists a disability issue. At the CCH, the parties informed the hearing officer that they both wanted to withdraw the disability issue and to proceed just on the extent issue. The hearing officer agreed to do that. However, in the hearing officer's decision, disability is listed as a disputed issue with no indication that it had been withdrawn, and the hearing officer made a finding of fact, conclusion of law, and determination on the withdrawn disability issue. The carrier requests that we render a decision on the disability determination because that issue was withdrawn at the CCH. Because the record reflects that the parties withdrew the disability issue with the consent of the hearing officer, we agree that the hearing officer should not have made a determination on the withdrawn disability issue. We cannot agree that the parties actually litigated a disability issue because the parties recognized during the CCH that the only issue to be resolved by the hearing officer was the extent issue.

We affirm the hearing officer's determination that the compensable injury extends to include the cervical and thoracic spine in addition to the low back. We reverse the hearing officer's decision that the claimant had disability beginning on May 25, 2004, and continuing through the date of the CCH and at no other times, and we render a decision that disability was not a disputed issue before the hearing officer and therefore we strike Finding of Fact No. 5, Conclusion of Law No. 4, and that portion of the hearing officer's decision on the withdrawn disability issue.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge